

BERTHA ALEXANDER
Claimant

VS.

THE BOEING COMPANY
Respondent

AND

KEMPER INSURANCE
Insurance Carrier

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ORDER

ISSUES

- (1) Did claimant sustain personal injury by accident arising out of and in the course of her employment with the respondent?
- (2) Did claimant provide timely notice of accident?

The preliminary hearing Order should be affirmed.

The Appeals Board finds that claimant injured her neck and left shoulder on December 4, 1996, while drilling parts. The accident arose out of and in the course of claimant's employment with respondent.

The Appeals Board also finds claimant provided timely notice of accident as required by K.S.A. 44-520. The Appeals Board agrees with the Administrative Law Judge's finding that claimant told her immediate supervisor, Julie A. McMonigle, about her shoulder and neck injury the day of the incident. Also, on January 2, 1997, claimant advised another supervisor, Ron Spencer, about her injuries when she requested to go to respondent's medical department for treatment.

Although the Appeals Board expects the parties will present additional evidence regarding the appropriate date of accident, for preliminary hearing purposes claimant has established December 4, 1996, as the initial date of accident with an aggravation following that date through December 31, 1996 (claimant's last day of work before seeking medical treatment). Whether the accident date is ultimately determined to be December 4, 1996, or the period from December 4, 1996, through December 31, 1996, claimant has established timely notice.

In its brief to the Appeals Board, respondent and its insurance carrier raised the issue whether Kemper Insurance may be held responsible for any portion of this claim as it was not the respondent's carrier after January 1, 1997, and claimant had alleged a date of accident through January 2, 1997. Because that was not an issue raised before the Administrative Law Judge, the Appeals Board may not address it for the first time on this review. See K.S.A. 44-555c, as amended. Nonetheless, as indicated above the record establishes claimant's last day of work before seeking medical treatment was December 31, 1996. The record also establishes claimant was off work on January 1, 1997, reported to work the next day, and immediately went to respondent's medical department. Those facts would support a finding that claimant's accidental injury occurred before Kemper discontinued coverage.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the preliminary hearing Order dated August 6, 1997, entered by Administrative Law Judge Nelsonna Potts Barnes should be, and hereby is, affirmed.

IT IS SO ORDERED.

Dated this ____ day of October 1997.

BOARD MEMBER

c: Roger A. Riedmiller, Wichita, KS
Frederick L. Haag, Wichita, KS
Nelsonna Potts Barnes, Administrative Law Judge
Philip S. Harness, Director